

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FILED  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
09 MAR 11 PM 2:36  
LAURA A. BRIGGS  
CLERK

MICROMETL CORP.,  
Plaintiff.

vs.

TRANZACT TECHNOLOGIES, INC.,  
Defendant.

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

**1: 08-cv-0321-LJM-WTL**

**NOTICE OF REMOVAL  
(28 U.C.S.A. § 1441)**

Defendant, TRANZACT TECHNOLOGIES, INC. (hereinafter, "Defendant"), files this Notice of Removal pursuant to 28 U.S.C. § 1446(a).

**A. Introduction**

1. On February 25, 2008, Plaintiff, MICROMETL CORP. (hereinafter, "Plaintiff"), filed suit in the Marion County Court located in Marion County, Indiana, in Cause No. 49D10 08 02 PL 0009473. (A copy of Plaintiff's Complaint is attached hereto as part of Exhibit "1," containing all of the pleadings, process, orders and other filings served upon the Defendant in the state court action).

2. In the aforementioned suit, Plaintiff alleges that the Defendant "overbilled" Plaintiff for costs associated with the execution of the parties' shipper services agreement. Plaintiff alleges that the "overbilled" amount totals in excess of \$100,000. (Ex. 1, Complaint, ¶ 8).

3. Plaintiff attached a "true and accurate" copy of a portion of the parties' shipper services agreement as an exhibit to its state court Complaint. That agreement identifies Plaintiff as "an Indiana corporation" and identifies Defendant as "an Illinois corporation." The contract also identifies Plaintiff's principal place of business as Indianapolis, Indiana, and Defendant's principal place of business as Elmhurst, Illinois. (Ex. 1, Complaint - Exhibit A).

4. By Plaintiff's own admissions, contained in its allegations and exhibits to its Complaint, this suit constitutes a civil action where the matter in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different States.

**B. Basis for Removal**

5. Removal is proper because the United States District Courts have original jurisdiction over all civil actions where the matter in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different States. 28 U.S.C. §§ 1332, 1441(a).

6. For purposes of removal only, venue is proper in this district under 28 U.S.C. § 1441 (a) because this district and division embrace the place where the removed action has been pending.

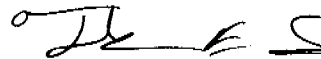
7. Removal is sought prior to the expiration of thirty (30) days of the date of service of process (March 5, 2008), pursuant to 28 U.S.C.A. § 1446(b).

8. Copies of this Notice of Removal will be served upon all parties and filed with the clerk of the state court pursuant to 28 U.S.C.A. § 1446(d).

WHEREFORE, Defendant TRANZACT TECHNOLOGIES, INC., prays that this action proceed in this Court as an action properly removed to it, and for such other and further relief at law or in equity to which it may show itself justly entitled.

Respectfully Submitted this 10<sup>th</sup> Day of March, 2008.

Respectfully submitted:



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Thomas E. Schulte/#20360-49

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY  
10 West Market Street, Suite 1500  
Indianapolis, IN 46204  
(317) 492-9274 ph  
(317) 687-2414 fax

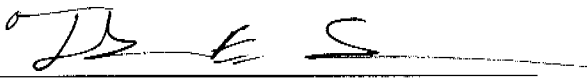
Daniel C. Sullivan (*pro hac vice* pending)  
Ryan A. Mahoney (*pro hac vice* pending)  
SULLIVAN, HINCKS & CONWAY  
122 West 22<sup>nd</sup> Street, Ste. 350  
Oak Brook, IL 60523  
630/573-5021 (Ph)  
630/573/5130 (Fax)

Attorneys For Defendant,  
Tranzact Technologies, Inc.

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served by United States mail, first-class postage prepaid, this 11<sup>th</sup> day of March, 2008, upon the following:

Douglas R. Brown  
Thomas W. Blessing  
STEWART & IRWIN, P.C.  
251 East Ohio Street, Suite 1100  
Indianapolis, Indiana 46204

  
\_\_\_\_\_  
Thomas E. Schulte

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY  
10 West Market Street, Suite 1500  
Indianapolis, IN 46204  
(317) 492-9274 ph  
(317) 687-2414 fax

STATE OF INDIANA )  
 )SS: IN THE MARION COUNTY COURT  
COUNTY OF MARION ) CAUSE NO.:

MICROMETL CORP., )  
 ) 49D10 08 02 PL 009475  
Plaintiff, )  
 )  
v. )  
 )  
TRANZACT TECHNOLOGIES, INC., )  
 )  
Defendant. )

To Defendant: TRANZACT TECHNOLOGIES, INC.  
c/o Highest and Best Officer Present  
360 W. Butterfield Road, Suite 400  
Elmhurst, IL 60126

You are hereby notified that you have been sued by the person named as Plaintiff and in the Court indicated above.

The nature of the suit against you is stated in the complaint which is attached to this Summons. It also states the relief sought or the demand made against you by the Plaintiff.

An answer or other appropriate response in writing to the complaint must be filed either by you or your attorney within twenty (20) days, commencing the day after you receive this Summons, (or twenty-three (23) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by Plaintiff.

If you have a claim for relief against the Plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

Dated: \_\_\_\_\_

*Elizabeth A. White*  
Clerk, Marion Superior Court FEB 29 2008 (Seal)

(The following manner of service of summons is hereby designated.)

- ☒ Registered or certified mail.  
☐ Service at place of employment, to-wit:  
☐ Service on individual - (Personal) at above address.  
☐ Service on agent. (Specify)  
☐ Other service.

Thomas W. Blessing, #15696-49  
STEWART & IRWIN, P.C.  
Attorneys at Law  
251 East Ohio Street, Suite 1100  
Indianapolis, Indiana 46204-2147  
317-639-5454/Fax: 317-632-1319

**CLERK'S CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, I mailed a copy of this Summons and a copy of the complaint to the Defendant, TranzAct Technologies, Inc., by certified mail, requesting a return receipt, at the address furnished by the Plaintiff.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Clerk, Marion Superior Court

**RETURN ON SERVICE OF SUMMONS BY MAIL**

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the complaint mailed to Defendant was accepted by the Defendant on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the complaint was returned not accepted on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the complaint mailed to the Defendant was accepted by \_\_\_\_\_ on behalf of said Defendant on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Clerk, Marion Superior Court

SI-170176\_1

STATE OF INDIANA )  
COUNTY OF MARION )

IN THE MARION COUNTY COURT  
SS:  
CAUSE NO.:

MICROMETL CORP., )

Plaintiff, )

v. )

TRANZACT TECHNOLOGIES, INC., )

Defendant. )

49D10 08 02 PL 009473

**FILED**

FEB 25 2008

201

**COMPLAINT**

*Elizabeth A. White*  
CLERK OF THE MARION CIRCUIT COURT

Plaintiff, Micrometl Corporation ("Micrometl"), by counsel and for its Complaint against Defendant, Tranzact Technologies, Inc. ("Tranzact") alleges:

1. In 2003, Micrometl and Tranzact entered into a written shipper services agreement ("contract"). A true and accurate copy of the contract is attached hereto and incorporated by reference herein as Exhibit A.
2. Pursuant to the contract, Tranzact agreed to manage freight shipping for Micrometl and to audit Micrometl's shipping expenses.
3. Pursuant to Micrometl's agreement with one of its customers, Carrier Corporation ("Carrier"), all shipping expenses associated with products sold by Micrometl to Carrier were billed to and paid by Carrier.
4. Shipping expenses associated with Micrometl's sales to other customers were billed to and paid by Micrometl.
5. Tranzact had actual or constructive knowledge of these practices.
6. In November 2005, Tranzact unilaterally and without prior notice began billing Micrometl for shipping expenses associated with products sold by Micrometl to Carrier.

7. Tranzact has also overbilled Micrometl for Yellow Freight charges in an undetermined amount.

8. Tranzact has overbilled Micrometl in excess of \$100,000.

9. Said overbillings are inconsistent with the parties' prior course of dealing.

10. Tranzact breached the contract without excuse or justification and Micrometl has sustained damages as a proximate result of said breach.

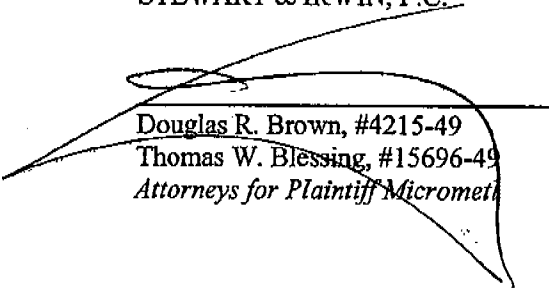
11. In December 2006, Micrometl notified Tranzact, in writing, of the overbillings and requested that they be corrected. However, Tranzact has failed and refused to correct the overbillings.

12. Micrometl has made written demand upon Tranzact for payment, but Tranzact refuses to pay.

WHEREFORE, Plaintiff, Micrometl Corporation, by counsel, respectfully requests judgment in its favor and against Defendant, for damages in an amount sufficient to compensate Plaintiff for its losses, for interest, costs of this action and all other relief reasonable in the premises.

Respectfully submitted,

STEWART & IRWIN, P.C.

  
Douglas R. Brown, #4215-49  
Thomas W. Blessing, #15696-49  
Attorneys for Plaintiff Micrometl

STEWART & IRWIN, P. C.  
251 E. Ohio Street, Suite 1100  
Indianapolis, IN 46204  
Telephone: (317)639-5454  
Facsimile: (317)632-1319

SI-165178\_1



**FREEDOM LOGISTICS NETWORK  
21<sup>ST</sup> CENTURY SHIPPER  
GLOBAL TRANSPORTATION SERVICES AGREEMENT**

The Freedom Logistics Network (FLN) is a unique service division of Tranzact Technologies, Inc. FLN has developed beneficial solutions and supporting technologies for you, as a user of transportation/logistic services. We have contracted transportation/logistic services for you based upon a volume of shipments provided by other shippers that is standardized through our FREEDOM 2020 © and 2021 © Rate System.

The principles for the FLN that are a part of our service offerings are contained in their entirety in our FREEDOM LOGISTICS NETWORK 21<sup>ST</sup> CENTURY SHIPPER TRANSPORTATION SERVICES, which can be found at a secure link on our web site which we will provide to you before you partner with us. These written principles are what govern both our commitments and we want them readily available at all times so you can access them for your understanding and use.

In addition to providing you with pricing contained within and discounted off of the FREEDOM 2020 © and 2021 © for use in selecting transportation/logistic services which are available in the FLN under our contracts, Tranzact will facilitate your logistics processes with transportation payment, audit services and management reports. These services are subject to standard principles that are on the secure link on our web site. These rules govern both of our commitments that arise from our signatures implementing your membership in the Freedom Logistics Network.

We have made a sizable investment in the system, which we license for your use. This is important to us because the value of the FLN is the integrity of the system. Please note in the rules that you cannot sell or license our system in any way, including brokering transportation through our system, or using our system, particularly FREEDOM 2020 © and 2021 © or discounts, after you terminate your membership in the FLN.

We will implement your membership in the FLN immediately after receiving your endorsement. As shown in the principles, this commitment will be for a five- (5) year period and will automatically renew for additional two- (2) year periods unless you notify us at least sixty- (60) days prior to expiration of any period.

All contact information, passwords and other information will be given to you as the person authorized by your company to sign this membership commitment (unless you designate another individual).

**MEMBERSHIP ELECTION:**

**MEMBER SHIPPER:**

**MICROMETL**

An Indiana Corporation  
3035 N. Shadeland Ave., Suite 300  
Indianapolis, IN 46226

By: Gerald Holman

Title: Vice President, C.F.O.

Tel. No.: 317/524-5414 Fax No.: 317/543-5986

**FREEDOM LOGISTICS NETWORK**

**TRANZACT TECHNOLOGIES, INC.,**

An Illinois Corporation  
360 W. Butterfield Road, Suite 400  
Elmhurst, IL 60126

By: Jean H. Regan

Title: President, Tranzact Technologies, Inc.

Tel. No: 630/833-0890 Fax No: 630/833-0346

By: MARK WEBBER

TITLE: V.P., Mfg

TEL. NO: 317-524-5418

- 1 -  
Tranzact Technologies, Inc. / MicroMetl

Freedom Logistics Network 21<sup>st</sup> Century Shipper Services Agreement  
5/22/03

**EXHIBIT A**





## SCHEDULE I

### **SOFTWARE, RATES, CHARGES, PAYMENT OPTIONS**

1. **FREEDOM 2020® and FREEDOM 2021®** rates applicable to you as a Member Shipper can be found on the FLN Internet Website and are available to you effective as of the start date indicated on this contract. The rates are a part of this Agreement. As Member Carriers are added or deleted from the network, you will be notified by the FLN Logistics Group, and the FLN Internet Website will be updated accordingly. The applicable rates will be those that appear on the most current version of the FLN Internet Website.

2. **FLN invoices** will be paid by Tranzact Technologies, Inc. All Shipments moving via the FLN will be invoiced on a weekly basis. All invoices to be paid by Tranzact should be forwarded to:

TRANZACT TECHNOLOGIES, INC.  
360 W. Butterfield Road, Suite 400  
Elmhurst, IL 60126

3. **FLN Services** - FLN will provide the following services as a part of your FLN membership:
- a. Audits for overcharges and duplicate payments will be included in the payments for all designated shipments transported by a Member Carrier or non-member carrier.
  - b. FLN will supply the following Monthly Management Reports:
    1. Carrier Summary Corporate
    2. Carrier Summary By Division
    3. Lane Summary
  - c. Invoices from Parcel carriers will be paid at the manifest level only
  - d. StarRate (Software) web site for rating of Freedom shipments
  - e. StarLine Reporting System (Software) - License for Member Shipper use on-site: Prices quoted upon request
  - f. StarRate Software Integration with Internal Systems (Software) - License for Member Shipper use in house: Prices quoted upon request
  - g. Inbound Management Reporting System Software: Prices quoted upon request
  - h. On-Site Logistics Support: Prices quoted upon request
  - i. Flat file of **FREEDOM 2020® and 2021®** Less Than Truckload rates - prices quoted upon request
  - j. Custom Software design - prices quoted upon request

4. **Tranzact Technologies** will conduct a post audit of freight charges paid to carriers for shipments made up to 120-150 days prior to the effective date of this agreement. The exact time frame for including bills in the post audit depends upon the length of time needed to provide Tranzact the actual freight bills themselves as well as the pertinent rates, discounts and charges used in the post audit itself. In return for conducting the post audit, Tranzact will retain 40% of all monies recovered from overcharges related to the incorrect application of rates, discounts, rules or charges including duplicate billings

5. **Initial Investment\*** ..... \$ 1,500  
\*Includes start-up expenses to bring Member Shipper on-line to FLN

6. **Monthly Investment\*\*** ..... \$ 1,000  
\*\*The monthly investment for participation in the FLN:

7. All Member Shipper charges will be processed by Tranzact Technologies, Inc. weekly. The procedure will be as follows:

- a. Weekly pay periods end on a scheduled day each week.
- b. All freight invoices will be received on a daily basis.
- c. Freight invoices will be entered into the system within a reasonable period after receipt.
- d. The day prior to receipt of funds due, Member Shipper will be notified via facsimile transmission or e-mail of total dollars due to satisfy payment obligations for that week.
- e. Member Shipper will fund Tranzact Technologies (ACH or wire transfer) for weekly payment obligation no later than 5 p.m. on the next business day. If this payment obligation is not met by the next business day at 5 p.m., Member Shipper will be assessed a \$200 late payment fee to be included in the next week's payment.

#### PAYMENT OPTIONS

Client or Tranzact Initiated ACH:  
No Charge

All other forms of payment:  
\$50.00 per month administration fee

#### RECEIVING FUNDING INFORMATION

Receive weekly by e-mail:  
No Charge

Receive weekly by fax:  
\$25.00 per month administration fee

- f. If Member Shipper chooses not to fund via wire transfer or ACH, Member Shipper must provide Tranzact Technologies with the equivalent of four- (4) weeks' funds based upon an average of the prior 4 weeks' experience or, if there is an insufficient period, then based upon an estimate by Tranzact Technologies.
- g. Payment to the Member Carriers will be released to each Member Carrier via check once collected funds are received.
- h. Member Shipper will be billed monthly for membership fees (manual, wire transfer or ACH).

#### 8. Amendments Due to Volume

If the average number of bills paid per month over a three-month period exceeds 1100, the monthly investment may be adjusted. The adjusted investment will not exceed \$1 per bill.

This Schedule I issued on July 31, 2003

and becomes effective Aug. 18, 2003

MEMBER SHIPPER:  
MICROMETL  
An Indiana Corporation

Initials: [Signature]  
NAME: Gerald Holman  
TITLE: CFO

Mark Webber  
V.P., Mfg

FREEDOM LOGISTICS NETWORK  
TRANZACT TECHNOLOGIES, INC.  
An Illinois Corporation

Initials: [Signature]  
Jean H. Regan  
President